

1 B. GOOD CAUSE STATEMENT

2 This action is likely to involve trade secrets, customer and pricing lists and
3 other valuable research, development, commercial, financial, technical and/or
4 proprietary information for which special protection from public disclosure and
5 from use for any purpose other than prosecution of this action is warranted. Such
6 confidential and proprietary materials and information consist of, among other
7 things, confidential business or financial information, information regarding
8 confidential business practices, or other confidential research, development, or
9 commercial information (including information implicating privacy rights of third
10 parties), information otherwise generally unavailable to the public, or which may be
11 privileged or otherwise protected from disclosure under state or federal statutes,
12 court rules, case decisions, or common law. Accordingly, to expedite the flow of
13 information, to facilitate the prompt resolution of disputes over confidentiality of
14 discovery materials, to adequately protect information the parties are entitled to keep
15 confidential, to ensure that the parties are permitted reasonable necessary uses of
16 such material in preparation for and in the conduct of trial, to address their handling
17 at the end of the litigation, and serve the ends of justice, a protective order for such
18 information is justified in this matter. It is the intent of the parties that information
19 will not be designated as confidential for tactical reasons and that nothing be so
20 designated without a good faith belief that it has been maintained in a confidential,
21 non-public manner, and there is good cause why it should not be part of the public
22 record of this case.

23 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

24 The parties further acknowledge, as set forth in Section 12.3, below, that this
25 Stipulated Protective Order does not entitle them to file confidential information
26 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
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1 and the standards that will be applied when a party seeks permission from the court
2 to file material under seal.

3 There is a strong presumption that the public has a right of access to judicial
4 proceedings and records in civil cases. In connection with non-dispositive motions,
5 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
6 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
7 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics,*
8 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
9 require good cause showing), and a specific showing of good cause or compelling
10 reasons with proper evidentiary support and legal justification, must be made with
11 respect to Protected Material that a party seeks to file under seal. The parties' mere
12 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—
13 without the submission of competent evidence by declaration, establishing that the
14 material sought to be filed under seal qualifies as confidential, privileged, or
15 otherwise protectable—constitute good cause.

16 Further, if a party requests sealing related to a dispositive motion or trial, then
17 compelling reasons, not only good cause, for the sealing must be shown, and the
18 relief sought shall be narrowly tailored to serve the specific interest to be protected.
19 *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
20 each item or type of information, document, or thing sought to be filed or introduced
21 under seal in connection with a dispositive motion or trial, the party seeking
22 protection must articulate compelling reasons, supported by specific facts and legal
23 justification, for the requested sealing order. Again, competent evidence supporting
24 the application to file documents under seal must be provided by declaration.

25 Any document that is not confidential, privileged, or otherwise protectable in
26 its entirety will not be filed under seal if the confidential portions can be redacted.
27 If documents can be redacted, then a redacted version for public viewing, omitting
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1 only the confidential, privileged, or otherwise protectable portions of the document,
2 shall be filed. Any application that seeks to file documents under seal in their
3 entirety should include an explanation of why redaction is not feasible.

4 2. DEFINITIONS

5 2.1 Action: The above-captioned federal lawsuit.

6 2.2 Challenging Party: a Party or Non-Party that challenges the designation
7 of information or items under this Order.

8 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
11 the Good Cause Statement.

12 2.4 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”
13 Information or Items: Extremely sensitive “CONFIDENTIAL” Information or
14 Items, the disclosure of which to another Party or Non-Party would create a
15 substantial risk of serious harm that could not be avoided by less restrictive means.

16 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
17 their support staff).

18 2.6 Designating Party: a Party or Non-Party that designates information or
19 items that it produces in disclosures or in responses to discovery as
20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY.”

22 2.7 Disclosure or Discovery Material: all items or information, regardless
23 of the medium or manner in which it is generated, stored, or maintained (including,
24 among other things, testimony, transcripts, and tangible things), that are produced or
25 generated in disclosures or responses to discovery in this matter.

26 2.8 Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who has been retained by a Party or its counsel to serve as
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1 an expert witness or as a consultant in this Action.

2 2.9 House Counsel: attorneys who are employees of a party to this Action
3 or who have been engaged by a party to this Action to serve as if employed as an in-
4 house for that party. House Counsel does not include Outside Counsel of Record.

5 2.10 Non-Party: any natural person, partnership, corporation, association or
6 other legal entity not named as a Party to this action.

7 2.11 Outside Counsel of Record: attorneys who are not employees of a
8 party to this Action or who have not been engaged by a party to this Action to serve
9 as if employed as an in-house counsel for that party, but are retained to represent or
10 advise a party to this Action and have appeared in this Action on behalf of that party
11 or are affiliated with a law firm that has appeared on behalf of that party, and
12 includes support staff.

13 2.12 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.14 Professional Vendors: persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 2.15 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY.”

25 2.16 Receiving Party: a Party that receives Disclosure or Discovery
26 Material from a Producing Party.

27 3. SCOPE

1 The protections conferred by this Stipulation and Order cover not only
 2 Protected Material (as defined above), but also (1) any information copied or
 3 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 4 compilations of Protected Material; and (3) any testimony, conversations, or
 5 presentations by Parties or their Counsel that might reveal Protected Material.

6 Any use of Protected Material at trial shall be governed by the orders of the
 7 trial judge. This Order does not govern the use of Protected Material at trial.

8 4. DURATION

9 Once a case proceeds to trial, information that was designated as
 10 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
 11 as an exhibit at trial becomes public and will be presumptively available to all
 12 members of the public, including the press, unless compelling reasons supported by
 13 specific factual findings to proceed otherwise are made to the trial judge in advance
 14 of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”
 15 showing for sealing documents produced in discovery from “compelling reasons”
 16 standard when merits-related documents are part of court record). Accordingly, the
 17 terms of this protective order do not extend beyond the commencement of the trial.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.

20 Each Party or Non-Party that designates information or items for protection under
 21 this Order must take care to limit any such designation to specific material that
 22 qualifies under the appropriate standards. The Designating Party must designate for
 23 protection only those parts of material, documents, items or oral or written
 24 communications that qualify so that other portions of the material, documents, items
 25 or communications for which protection is not warranted are not swept unjustifiably
 26 within the ambit of this Order.

1 Mass, indiscriminate or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber the case development process or to impose
4 unnecessary expenses and burdens on other parties) may expose the Designating
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic
16 documents, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), that the Producing Party affix at a minimum, the legend
18 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
19 contains protected material. If only a portion of the material on a page qualifies for
20 protection, the Producing Party also must clearly identify the protected portion(s)
21 (e.g., by making appropriate markings in the margins).

22 A Party or Non-Party that makes original documents available for inspection
23 need not designate them for protection until after the inspecting Party has indicated
24 which documents it would like copied and produced. During the inspection and
25 before the designation, all of the material made available for inspection shall be
26 deemed "CONFIDENTIAL." After the inspecting Party has identified the
27 documents it wants copied and produced, the Producing Party must determine which
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documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL”, or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” legend to each page that contains Protected Material. If only a portion of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in depositions that the Designating Party identifies the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” legend. If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably

1 necessary to disclose the information for this Action;

2 (b) the officers, directors, and employees (including House Counsel) of
3 the Receiving Party to whom disclosure is reasonably necessary for this Action;

4 (c) Experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this Action and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (d) the court and its personnel;

8 (e) court reporters and their staff;

9 (f) professional jury or trial consultants, mock jurors, and Professional
10 Vendors to whom disclosure is reasonably necessary for this Action and who have
11 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (g) the author or recipient of a document containing the information or a
13 custodian or other person who otherwise possessed or knew the information;

14 (h) during their depositions, witnesses, and attorneys for witnesses, in the
15 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
16 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will
17 not be permitted to keep any confidential information unless they sign the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
19 agreed by the Designating Party or ordered by the court. Pages of transcribed
20 deposition testimony or exhibits to depositions that reveal Protected Material may
21 be separately bound by the court reporter and may not be disclosed to anyone except
22 as permitted under this Stipulated Protective Order; and

23 (i) any mediator or settlement officer, and their supporting personnel,
24 mutually agreed upon by any of the parties engaged in settlement discussions.

25 7.3 Disclosure of “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY”
26 Information or Items. Unless otherwise ordered by the court or permitted in writing
27 by the Designating Party, a Receiving Party may disclose any information or item
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designated “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the court and its personnel;

(d) private court reporters and their staff to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(e) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order

1 to issue in the other litigation that some or all of the material covered by the
 2 subpoena or order is subject to this Protective Order. Such notification shall include
 3 a copy of this Stipulated Protective Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be
 5 pursued by the Designating Party whose Protected Material may be affected.

6 If the Designating Party timely seeks a protective order, the Party served with
 7 the subpoena or court order shall not produce any information designated in this
 8 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY’S
 9 EYES ONLY” before a determination by the court from which the subpoena or
 10 order issued, unless the Party has obtained the Designating Party’s permission. The
 11 Designating Party shall bear the burden and expense of seeking protection in that
 12 court of its confidential material and nothing in these provisions should be construed
 13 as authorizing or encouraging a Receiving Party in this Action to disobey a lawful
 14 directive from another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a
 18 Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
 19 CONFIDENTIAL – ATTORNEY’S EYES ONLY” Such information produced by
 20 Non-Parties in connection with this litigation is protected by the remedies and relief
 21 provided by this Order. Nothing in these provisions should be construed as
 22 prohibiting a Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to
 24 produce a Non-Party’s confidential information in its possession, and the Party is
 25 subject to an agreement with the Non-Party not to produce the Non-Party’s
 26 confidential information, then the Party shall:

27 (1) promptly notify in writing the Requesting Party and the Non-Party
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1 that some or all of the information requested is subject to a confidentiality
2 agreement with a Non-Party;

3 (2) promptly provide the Non-Party with a copy of the Stipulated
4 Protective Order in this Action, the relevant discovery request(s), and a reasonably
5 specific description of the information requested; and

6 (3) make the information requested available for inspection by the
7 Non-Party, if requested.

8 (c) If the Non-Party fails to seek a protective order from this court within
9 14 days of receiving the notice and accompanying information, the Receiving Party
10 may produce the Non-Party's confidential information responsive to the discovery
11 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
12 not produce any information in its possession or control that is subject to the
13 confidentiality agreement with the Non-Party before a determination by the court.
14 Absent a court order to the contrary, the Non-Party shall bear the burden and
15 expense of seeking protection in this court of its Protected Material.

16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
18 Protected Material to any person or in any circumstance not authorized under this
19 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
20 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
21 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
22 persons to whom unauthorized disclosures were made of all the terms of this Order,
23 and (d) request such person or persons to execute the "Acknowledgment and
24 Agreement to Be Bound" that is attached hereto as Exhibit A.

25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 26 PROTECTED MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain
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1 inadvertently produced material is subject to a claim of privilege or other protection,
2 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
3 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
4 procedure may be established in an e-discovery order that provides for production
5 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
6 (e), insofar as the parties reach an agreement on the effect of disclosure of a
7 communication or information covered by the attorney-client privilege or work
8 product protection, the parties may incorporate their agreement in the stipulated
9 protective order submitted to the court.

10 **12. MISCELLANEOUS**

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
12 person to seek its modification by the Court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this
14 Protective Order, no Party waives any right it otherwise would have to object to
15 disclosing or producing any information or item on any ground not addressed in this
16 Stipulated Protective Order. Similarly, no Party waives any right to object on any
17 ground to use in evidence of any of the material covered by this Protective Order.

18 12.3 Filing Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Local Civil Rule 79-5. Protected Material
20 may only be filed under seal pursuant to a court order authorizing the sealing of the
21 specific Protected Material at issue. If a Party's request to file Protected Material
22 under seal is denied by the court, then the Receiving Party may file the information
23 in the public record unless otherwise instructed by the court.

24 **13. FINAL DISPOSITION**

25 After the final disposition of this Action, as defined in paragraph 4, within 60
26 days of a written request by the Designating Party, each Receiving Party must return
27 all Protected Material to the Producing Party or destroy such material. As used in
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1 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
2 summaries, and any other format reproducing or capturing any of the Protected
3 Material. Whether the Protected Material is returned or destroyed, the Receiving
4 Party must submit a written certification to the Producing Party (and, if not the same
5 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
6 (by category, where appropriate) all the Protected Material that was returned or
7 destroyed and (2) affirms that the Receiving Party has not retained any copies,
8 abstracts, compilations, summaries or any other format reproducing or capturing any
9 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
10 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
11 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
12 reports, attorney work product, and consultant and expert work product, even if such
13 materials contain Protected Material. Any such archival copies that contain or
14 constitute Protected Material remain subject to this Protective Order as set forth in
15 Section 4 (DURATION).

16 14. VIOLATION

17 Any violation of this Order may be punished by appropriate measures including,
18 without limitation, contempt proceedings and/or monetary sanctions.

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20 IT IS SO ORDERED.

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22 DATED: August 5, 2016

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24 _____
25 GAIL J. STANDISH
26 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on _____ in the case of *Desiccare, Inc. v. Boveda, Inc.* Case No. 2:16-cv-
 00702 SVW (GJSx). I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I
 solemnly promise that I will not disclose in any manner any information or item that
 is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Central District of California for enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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